IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3875 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KETANBHAI SARABHAI SHAH

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Misc.Application No. 3875 of 2002

MR YN RAVANI for Petitioner No. 1

MR PR ABICHANDANI, A.P.P. for Respondent No. 1

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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 01/07/2002

ORAL JUDGEMENT

Rule. Shri P.R.Abichandani, learned A.P.P. waives service of Rule.

2. An F.I.R. being CR No.26 of 2002 was filed by the complainant Sunilkumar Lalsinh Bali before the Navrangpura Police Station on 10.1.2002 at about 9.00 p.m. for the offences punishable u/ss. 406, 409, 418, 420, 465, 468, 471 r/w 120-B I.P.Code of creating bogus Insurance documents like R.C.Book, etc. and thereby

misappropriated huge sum of Rs.1,12,28,000/- for their own purpose by obtaining loan from the Bank, and thereby cheating the bank. These offences alleged to have been committed by number of accused during the period from 5.11.1999 to 18.10.2000. The main accused No.1 Dipakkumar Kohli is the Manager of Punjab National Bank, Navrangpura Branch, Ahmedabad.

3. The present applicant - accused was arrested on 18.3.2002 in connection with the aforesaid offences. Therefore, first he applied for regular bail before the Court of learned City Sessions Judge, Ahmedabad by way of filing Criminal Miscellaneous Application No.607 of 2002. However, the said Bail Application was rejected by the learned Additional City Sessions Judge, Court No.18, Ahmedabad on 27.3.2002 on the ground that the applicant accused has committed serious economic offence and therefore he should not be released on bail. Therefore, the applicant - accused approached this Court by way of Miscellaneous Criminal Application No.1934 of 2002 which was withdrawn by the learned Counsel for the applicant accused on 3.4.2002 and accordingly it was disposed of with liberty to the petitioner to approach the learned Judge after the charge-sheet is filed.

4. A separate charge sheet came to be filed by the Police against the present applicant - accused on 15.6.2002 as the police was not able to arrest the remaining accused who are absconding. With the filing of charge sheet the accused once again approached the learned City Sessions Judge by way of fresh Criminal Miscellaneous Application No.1782 of 2002 for regular bail, which was once again dismissed by the learned Addl. City Sessions Judge, Court No.16, Ahmedabad, by his judgment and order dated 26.6.2002 on the ground that there is prima facie case against the accused of cheating the bank and committing serious economic offence which ruin the country. The learned Judge has also taken into consideration the Judgment of the Hon'ble Supreme Court in the case of ASHOK DHINGRA V/S. N.C.T.of DELHI, reported in (2000) 9 SCC 533, and held that the aforesaid judgment will have no application to the facts of the case because the accused was arrested in this case on 18.3.2002 whereas the charge sheet was filed on 15.6.2002, hence this petition.

5. Learned Counsel Shri Ravani for the applicant accused submitted that now in this case the charge sheet is filed against the present applicant accused and not a single document is forged one and the offence is alleged to have been committed between 5.11.1999 to 18.10.2000

and the petitioner is in jail since last more than 3 months, therefore he should be released on bail. He submitted that normally in an offence like cheating or breach of trust the Supreme Court in the case of SANDEEP JAIN V/S. NATIONAL CAPITAL TERRITORY OF DELHI, reported in AIR 2000 SC 714, held that the accused should be enlarged on bail. According to him once the charge sheet is filed there is no likelihood of tampering with the witnesses.

6. Having carefully considered the judgment of the Hon'ble Supreme Court in the case of SANDEEP JAIN (Supra) I am of the considered opinion that the aforesaid Judgment will have no application to the facts of this case. In Sandip Jain's case (supra) the accused was arrayed in FIR on the complaint lodge by private complainant Capt. Walia with the Defence Colony Police Station, New Delhi, for the offences u/ss.420 and 406 of the I.P.Code. He was arrested by the police on 20.10.1998 and released on bail by the Metropolitan Magistrate, Patiala House, New Delhi on certain usual conditions. As part of compliance of the conditions he executed a bond as a sum of Rs.50,000/- with two solvent sureties and one of the sureties issued three cheques for Rs.2 lacs in total to the complainant. When the cheques were dishonoured by the drawee bank the complainant moved the Court for cancellation of the bail granted to the accused and the bail was cancelled on 27.3.1999 and the accused was taken back in custody and since then he was languishing in jail till the Hon'ble Supreme Court decided the Criminal Appeal No.59 of 2000 on 18.1.2000.

7. In view of the above facts the Hon'ble Supreme Court in Sandeep Jain's case (supra) observed in Para : 4 of its judgment that -

"We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs.2 lacs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs.2 lacs. If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to his legal remedies provided by law. Similarly if the Court

> was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheque issued by him, the Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper."

8. Coming to the facts of this case it is clear that the aforesaid judgment of the Hon'ble Supreme Court will have no application. It is not a simple case of individual cheating or breach of trust. In the instant case not one, but number of accused conspired together with none-else but the Manager of the Punjab National Bank and by creating forged documents they managed to get loan in all of more than one Crore Rupees from the Bank and cheated the Bank. The modus operandi on the part of the accused were apparent because as soon as the complaint was filed all the accused, except the present applicant accused, were absconding. The police, with great difficulty, was able to arrest the present applicant - accused. That if the present applicant accused had cooperated with the police and given whereabouts of the remaining accused by this time they would have been definitely arrested, but still they are absconding. In such type of cases where the learned Judge, who has discretion to release the accused on bail, has not thought it fit to exercise the discretion in favour of the accused then certainly this Court would not interfere in such discretionary order. This type of scams with the cooperative bank and Nationalised banks are increasing in such a manner that if the courts do not take strict view of the matters then it may go beyond control of any one. This is not an offence committed by individual against one person, but it is an offence committed against innocent depositors of the Bank and the society at large.

9. This brings me to the second judgment of the Hon'ble Supreme Court cited by Shri Ravani. Shri Ravani tried to rely upon the Judgment of the Hon'ble Supreme Court in the case of Ashok Dhingra v/s. N.C.T. of Delhi, reported in (2000) 9 SCC 533. The said Judgment of the Hon'ble Supreme Court will have no application to the facts of this case at all. In that case Japanese national was cheated for Rs.65 lacs by an individual accused person. Considering the facts of that case the Hon'ble Supreme Court observed that the accused was in custody for about 5 months and therefore imposing certain conditions he was released on bail permitting the

respondent to move for cancellation of bail, if the accused misuses his bail or delays the trial.

10. As stated earlier the applicant - accused in Jail since 18.3.2002 and hardly 3 months period has passed, therefore, at this juncture the aforesaid Judgment of the Hon'ble Supreme Court in Ashok Dhingra's case (supra) will not at all apply.

11. Except the aforesaid submissions no other submission was made. I do not find any substance or merit in the petition. Accordingly it is hereby dismissed. Rule discharged.

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Date : July 01, 2002 (B.J.Shethna, J.)

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